IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3098 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

ANILKUMAR H DESAI

Versus

DY CONSERVATOR OF FOREST

Appearance:

1. Special Civil Application No. 3098 of 1988

MR SHIVANG SHUKLA for MR YN OZA for Petitioner

MR RC KODEKAR AGP for Respondents

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 25/01/2002

C.A.V. JUDGEMENT

1. By this petition under Article 226 of the Constitution, the petitioner, a Range Forest Officer, has challenged the order dated 12.4.1988 of the disciplinary

authority inflicting punishment of reduction to a lower stage in the pay for a period of two years and ordering recovery of Rs.23,384.54 ps. from him as the loss caused to the government. That impugned order was made after differing from the findings and report of the Enquiry Officer who had exonerated the petitioner from the charges levelled against him.

2. The relevant basic facts emerging from the record are that when the petitioner was serving as Range Forest Officer at Dahod in the year 1982, an order to supply 8 tons of bailing wire was issued to a private party who supplied the bundles of goods at a place other than the appointed place where a watchman received them in the middle of night and in absence of the petitioner. Subsequently, by a receipt dated 17.12.1982, the petitioner issued a receipt of the same. The weight of the wire supplied was subsequently found to be less and the petitioner was held to be responsible for the shortage and the loss caused to the government. About two years after the event, a departmental enquiry was held levelling the charge that the petitioner had, by not verifying the weight of the wire received and certifying full receipt of the goods, caused loss to the government. The petitioner defended his case on the submissions that the bundles of wire were supplied by the contractor directly at the Rampura godown by order of his superior without the petitioner being informed and, therefore, the watchman on the spot had to receive the goods and the petitioner had to rely upon the report of the watchman. It was submitted by him that his certificate of receipt of the goods was dated 17.12.1982 which was falsified by correcting the date to make the receipt appear to be dated 13.12.1982, so as to justify and regularise the payment to the contractor on 13.12.1982. Such payment to the contractor was made without insisting upon the necessary certificate of the Range Forest Officer signifying the receipt of goods. It was contended in defence by the petitioner that on 13.12.1982 he was, in fact, on casual leave and could not have issued the receipt of goods. And, after a preliminary enquiry exonerating the petitioner, the contractor's deposit was confiscated for short supply of goods. Thus, according to the petitioner, he was only wrongly implicated with a view to covering the misconducts committed by others. It must be noted in this context that there is no dispute about the fact that there was short supply of goods and the petitioner had subsequently certified full receipt of the goods.

3. The finding of the Enquiry Officer, arrived at

after an elaborate examination of the evidence on record and consideration of all the contentions, was, accepting the defence of the petitioner, that the charge levelled against him was not proved. The disciplinary authority, in its detailed order of punishment, differed from the above findings on the grounds and premises that:

(i) the bundles of wire could not have been delivered directly at Rampura godown to the watchman without instructions of the petitioner;

(ii) the contractor had violated the conditions of the work order and the petitioner had not made a report for that;

(iii) the wires in question were used after receiving the same without weighing and that was an additional act of misconduct;

(iv) the over-writing and correction of date in the document of receipt dated 17.12.1982 did not alter the incident and such over-writing can be attributed to the petitioner himself; and

(v) in any case, the loss to the tune of Rs.23,384.54 ps. was attributable to the misdemeanor committed by the petitioner.

Admittedly, no opportunity of hearing was given to the petitioner before arriving at the above conclusions, nor was a copy of the enquiry report supplied to the petitioner before imposition of the punishment by the disciplinary authority.

4. It was vehemently argued by Mr.Shivang Shukla, learned advocate for the petitioner, that the Enquiry Officer had come to a correct conclusion after careful consideration of the evidence on record and the disciplinary authority was not justified in differing from the findings. The reasons given by the disciplinary authority to differ from the findings are illogical and perverse and, in any case, the petitioner was required to be heard before reaching a different conclusion, according to the submission. It was also submitted that the totality of circumstances indicated by the material on record would clearly lead to the conclusion that, in fact, the contractor had supplied less goods and secured the payment at the behest of the higher officers, while the petitioner was assigned the job of finishing the formalities. As against that, the learned Assistant Government Pleader reiterated and emphasised the admitted

facts that loss was caused to the government and the petitioner had certified the receipt of the goods without reporting any shortage and without caring to actually weigh the goods which clearly indicated his involvement in the misconduct. As for the procedural requirement, the learned Assistant Government Pleader relied upon the provisions of Rule 10 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971, whereunder the disciplinary authority is only required to record its reasons if it disagrees with the findings of the enquiry authority and there was no necessity of giving opportunity of making representation on the penalty proposed to be imposed.

5. The judgment of the Supreme Court in RAE BARELI KSHETRIYA GRAMIN BANK v. BHOLA NATH SINGH [(1997) 3 SCC 657] was relied upon by the respondent to submit that judicial review under Article 226 did not encompass reappreciation of evidence as if the High Court were an appellate authority. STATE OF KARNATAKA v. V.B.HIREGOWDAR [(1996) 10 SCC 505] was relied upon to submit that non-furnishing of copy of enquiry report to a delinquent employee did not vitiate the punishment as the rule laid down in RAMZAN KHAN's case on 20.11.1990 was applicable prospectively.

6. However, the law, in case of disciplinary authority differing from the conclusions of the Enquiry Officer, is now settled by the decision of the Supreme Court in PUNJAB NATIONAL BANK v. KUNJ BEHARI MISRA [AIR 1998 SC 2713], wherein it is observed that:

> "18.....When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in KARUNAKAR's case (1994 AIR SCW 1050).

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof, whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, then, before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charged framed against the officer."

6.1 Regulation 7 (2) referred in the above judgment is in pari materia with Rule 10 (2) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. The petitioner not having been given an opportunity of being heard or making any representation before the disciplinary authority differed from the findings of the Enquiry Officer, an important principle of natural justice was violated in the facts of the present case and the findings and conclusions of fact reached by the disciplinary authority were vitiated.

6.2 The above principle is also applied in the case of imposition of even minor penalty in a Division Bench judgment of this Court in STATE OF GUJARAT v. G.A.PATEL [1994 (1) GLR 727]. Para 13 of the said judgment reads as under:

"13. In view of the fact that a minor penalty has been imposed in the present case, the proceedings under sub-rule (4) of Rule 10 was not required to be followed. This means that before the imposition of the said penalty it was not necessary for the Disciplinary Authority to forward to the Government servant copy of inquiry report and his findings. The learned Counsel for the appellant, nevertheless, submits that in all

> fairness when the Disciplinary Authority is differing with the findings recorded by the Inquiry Officer, who has recorded the evidence and examined the witnesses, it will be fair and proper that an opportunity is given to the government servant concerned before imposing minor penalty on him. We are in agreement with this submission. Strictly construed Rule 10 (2) and (3) does not contemplate a fresh opportunity of being heard when imposing minor penalty. This is so even by reading Rule 11, which also contains the provision for imposition of minor penalty. Where the Inquiry Officer holds the charges to be proved and the Disciplinary Authority accepts the same, then the question of affording any further opportunity of being heard will not and cannot arise. On the submission of the inquiry report the Disciplinary Authority can take action, without further notice and impose minor penalty, if the Inquiry Officer has come to the conclusion that charges are proved. Where, however, like the present case, the Inquiry Officer exonerated the government servant, but the Disciplinary Authority comes to a contrary conclusion then, in our opinion, principles of natural justice have to be read into sub-rule (3) of Rule 10 and the reasons for disagreement and the findings, after recording, therefor should be given to the officer concerned before penalty is imposed."

7. Respectfully following the ratio of the above judgments and applying the same to the facts of the present case, it is held that the impugned order of punishment dated 12.4.1988 was vitiated by violation of the principles of natural justice and, therefore, requires to be set aside. Accordingly, allowing the petition, the impugned order dated 12.4.1988 issued by the respondent No.2 is hereby set aside. Rule is made absolute accordingly with no order as to costs. The respondent No.2 is accordingly directed to take necessary consequential steps so as to facilitate payment of arrears to the petitioner within two months of the receipt of certified copy of this order.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)